gent operation of the elevator, the relation of master and servant did not exist between defendant and the boy running the elevator; hence defendant was not liable for his negligence.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1128; Dec. Dig. § 284.* 9 Va.-W. Va. Enc. Dig. 727.]

3. Carriers (§ 305*)—Injury to Passenger in Elevator—Proximate Cause.—Since injury to a passenger in an office building elevator by the sudden lowering of the elevator, as he was about to leave the cage after he had been taken to one of the upper floors of the building by a boy not in defendant's employ, operating the elevator without authority, could not reasonably be foreseen as a probable result of defendant's negligence in leaving the elevator door open as the cage was standing at the first floor, while the elevator boy was temporarily absent, such negligence was not the proximate cause of the passenger's injury, so occasioned.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1139, 1245; Dec. Dig. § 305.* 10 Va.-W. Va. Enc. Dig. 372.]

CHESAPEAKE & O. RY. CO. *v.* HALL'S ADM'R.

March 11, 1909.

[63 S. E. 1007.]

1. Trial (§ 156*)—Demurrer to Evidence—Conclusiveness of Evidence.—On demurrer to plaintiff's evidence, matters covered by it must be taken as established.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 355, 356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 522-3.]

2. Railroads (§ 324*)—Crossing Accidents—Contributory Negligence—Signals—Failure to Give.—A railroad company is not liable for a death at a road crossing for failing to give statutory signals, if another or other warnings were given which in fact notified decedent of the train's approach, or which would have been her notice, if she had used ordinary care, so that she could have avoided the accident.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1021; Dec. Dig. § 324.* 4 Va.-W. Va. Enc. Dig. 134.]

3. Railroads (§ 327*)—Crossing Accidents—Contributory Negligence—Duty to Look.—Decedent was guilty of contributory negligence precluding recovery for her death, caused by being struck by an east-bound train while attempting to drive across the track, where she knew a train was approaching, though, on hearing that a train was approaching, she believed it was west-bound; where she could see the track east of the crossing for more than one-fourth mile; the train was rumbling, and apprised others in the neighborhood of its approach; she did not look down the track west of the crossing,

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*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

though, had she done so, she could have seen the train from 685 feet to 3,000 feet away.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1043-1056; Dec. Dig. § 327.* 11 Va.-W. Va. Enc. Dig. 592; 4 Id. 135.]

4. Railroads (§ 337*)—Crossings—Negligence—Proximate Cause.—Negligence of a railway company toward a traveler approaching a crossing does not excuse him from performing his reciprocal duties, and is not actionable, unless the proximate cause of his injury.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1090-1095; Dec. Dig. § 337.* 11 Va.-W. Va. Enc. Dig. 592; Id. 134.]

5. Railroads (§ 327*)—Crossing—Travelers—Duty.—A traveler in a highway must look and listen for trains before he attempts to cross the track, and, if by a proper use of his faculties he can escape injury, he is guilty of contributory negligence precluding recovery in not using them; he being required to look in every direction that the rails run, and to look and listen when such acts will be effective.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1043-1056; Dec. Dig. § 327.* 4 Va.-W. Va. Enc. Dig. 137.]

6. Negligence (§ 72*)—Contributory Negligence—Emergencies.—The rule that one in an emergency or great peril need not exercise the care required of prudent persons in ordinary circumstances does not apply where his fault has created the peril; applying only where he has been placed in the situation by negligence of defendant.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 99, 100; Dec. Dig. § 72.* 10 Va.-W. Va. Enc. Dig. 392.]

7. Railroads (§ 320*)—Crossing Accidents—Last Clear Chance Doctrine—Applicability.—The last clear chance doctrine cannot be applied to an action for the death of one killed while attempting to cross a track in front of a train, though the fireman saw her approaching where, when he realized that she was going to attempt to cross, it was too late to save her; he having the right to assume that she would not attempt to cross in front of the train, which was rapidly approaching in plain view.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1016; Dec. Dig. § 320.* 10 Va.-W. Va. Enc. Dig. 389-390.]

CITY OF RICHMOND *v.* POORE.

March 11, 1909.

[63 S. E. 1014.]

1. Municipal Corporations (§ 822*)—Sewers—Instructions—Setting Aside Judgment.—Where, in an action against a city for injuries caused by falling into an open sewer at night, the evidence for the

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*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.